

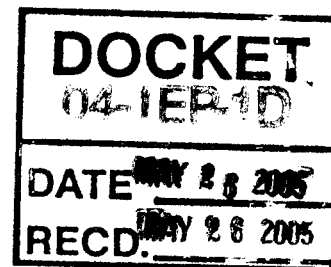
**CALIFORNIA ENERGY COMMISSION**

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
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May 26, 2005

Bob Anderson, Director  
Commodity Operations  
APS Energy Services  
P.O. Box 53901  
Phoenix, AZ 85072-3901



Dear Mr. Anderson:

Re: Application for Designation of Confidentiality for Electricity Supply and  
Uncertainties 2003-2016, Docket No. 04-IEP-1D

On April 14, 2005, APS Energy Services (APSES) filed Electricity Supply and Uncertainties 2003-2016, and supporting work papers in accordance with the Forms and Instructions adopted by the California Energy Commission (Energy Commission). As part of that filing APSES is seeking a designation of confidentiality for the below-referenced forms.

In its application for confidentiality (application) APSES requested forms and supporting work papers be kept confidential as follows:

- APSES asserts that Forms S-1, S-2 and S-5 contain specific proprietary information relating to APSES' portfolio perspectives. Additionally, the information submitted in these forms contains specific proprietary contract information. Applicant is seeking a permanent designation of confidentiality.
- APSES is also submitting Uncertainty and Risk Analysis. APSES asserts that the information revealed in these Uncertainty Analyses contain proprietary strategic business information specific to APSES' strategic planning and Risk Analysis strategies. The work papers and supporting data also contain specific proprietary load data for a particular customer in California. The Uncertainty Analysis represents APSES' perspective and supporting work papers are supplemental documentation which is not public information. APSES states this is sensitive and confidential information specific to the Applicant's business, and Applicant is seeking a permanent designation of confidentiality. In addition, APSES is also submitting Uncertainties for 0305.
- APSES asserts that Applicant is not aware of any way in which information set forth in the Electricity Supply and Uncertainties submittals could be legitimately required or duplicated by others. Applicant is seeking a permanent designation of confidentiality.

The Public Records Act exempts "trade secrets" from public disclosure, including "any formula, plan, ...production data, or compilation of information..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service... and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it." [Govt. Code § 6254.7(d).]

The Energy Commission's regulations provide for information to be designated as confidential if it "contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage." [20 CCR § 2505(a)(1)(D).] The California Public Records Act allows for non-disclosure of trade secrets [Gov. Code, § 6254(k), Evid. Code, § 1060]. The California courts have traditionally used the following definition of trade secret:

"A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it..." [Uribe v. Howie (1971) 19 Cal.App.3d 194, 207-208, 96 Cal. Rptr. 493, 500-501, from the Restatement of Torts, vol. 4, sec. 757, comment b, p. 5.]

APSES' application of April 14, 2005, makes a reasonable claim under the Energy Commission's regulation for classifying some of the information contained in your application as confidential, since it could provide your competitors with a competitive advantage if made public [Gov. Code, § 6254(k); Cal. Code Regs., tit. 20, § 2505]. Accordingly, confidentiality will be granted as follows:


- Form S-1, Capacity Resource Accounting Table. This table and supporting work papers have been granted confidentiality for three years until the end of 2008.
- Form S-2, Energy Balance Accounting Table. This table and supporting work papers have been granted confidentiality for three years until the end of 2008.
- Form S-5. Bilateral Contracts and supporting work papers have been granted confidentiality until 2016 or the contract end of term, whichever is later. For those contracts which contain clauses specifying that the parties to the contract must maintain confidentiality indefinitely, an argument must be produced, independent of the contract clause, explaining why such information could provide your competitors with a competitive advantage if made public. [Gov. Code § 6254(k); Cal. Code of Regs., tit. 20, § 2505.]
- Uncertainty description and supporting spreadsheet ranking individual factors creating risks and opportunities for APSES to pursue its business objectives are granted confidentiality until the end of 2016.

- Uncertainties for 0305 is general in scope and does not provide sufficient justification to be granted confidentiality. Confidentiality is therefore denied for uncertainties 0305.
- Customer load analysis and supporting work papers have been granted confidentiality since they are related to only one customer and cannot be aggregated. Confidentiality is granted until the end of 2016.
- Customer Hourly Load v. Temperature data and supporting work papers have been granted confidentiality since they are related to only one customer and cannot be aggregated. Confidentiality is granted until the end of 2016.

The procedures and criteria for appealing this decision are set forth in the California Code of Regulations, title 20, section 2505. Be advised that an appeal must be filed within 14 days from the date of my decision.

If you have any further questions regarding this decision, please contact Thomas Glaviano, Staff Counsel, at (916) 651-8893.

Sincerely,



SCOTT W. MATTHEWS  
Acting Executive Director

cc: Docket Unit, 04-IEP-1D